

South Dakota Amendment E

28. Judicial Accountability Initiative Law

Preamble. We, the People of South Dakota, find that the doctrine of judicial immunity has the potential of being greatly abused; that when judges do abuse their power, the People are obliged - it is their duty - to correct that injury, for the benefit of themselves and their posterity. In order to insure judicial accountability and domestic tranquility, we hereby amend our Constitution by adding these provisions as 28 to Article VI, which shall be known as "The J.A.I.L. Amendment."

1. Definitions. Where appropriate, the singular shall include the plural; and for purposes of this Amendment, the following terms shall mean:

1. "Blocking": Any act that impedes the lawful conclusion of a case, to include unreasonable delay and willful rendering of an unlawful or void judgment or order.
2. Judge: Justice, judge, magistrate judge, judge pro tem, and all other persons claiming to be shielded by judicial immunity.
3. Juror: A Special Grand Juror.
4. Strike: An adverse immunity decision or a criminal conviction against a judge.

2. Immunity. No immunity shall extend to any judge of this State for any deliberate violation of law, fraud or conspiracy, intentional violation of due process of law, deliberate disregard of material facts, judicial acts without jurisdiction, blocking of a lawful conclusion of a case, or any deliberate violation of the Constitutions of South Dakota or the United States, notwithstanding Common Law, or any other contrary statute.

3. Special Grand Jury. For the purpose of returning power to the People, there is hereby created within this State a thirteen-member Special Grand Jury with statewide jurisdiction having power to judge both law and fact. This body shall exist independent of statutes governing county Grand Juries. Their responsibility shall be limited to determining, on an objective standard, whether any civil lawsuit against a judge would be frivolous or harassing, or fall within the exclusions of immunity as set forth in paragraph 2, and whether there is probable cause of criminal conduct by the judge complained against.

4. Professional Counsel. The Special Grand Jury shall have exclusive power to retain non-governmental advisors, special prosecutors, and investigators, as needed, who shall serve no longer than one year, and thereafter shall be ineligible to serve; except a special prosecutor may be retained to prosecute ongoing cases in which they are involved through all appeals and any complaints to the Special Grand Jury. The Special Grand Jury may hire clerical staff, as needed, without time limitation.

5. Establishment of Special Grand Jury Facility. Within ninety days following the passage of this Amendment, the Legislature shall provide a suitable facility for the Special Grand Jury centrally located in the State, but not within a mile of any judicial body.

6. Annual Funding. The Legislature shall cause to be deducted one and nine-tenths percent from the gross judicial salaries of all judges, which amount shall be deposited regularly into an exclusive trust account created by this Amendment in paragraph 10 for its operational expenses, together with filing fees under paragraph 7, surcharges under paragraph 8, forfeited benefits of disciplined judges under paragraph 18, and any fines imposed by sentencing under paragraph 16.

7. Filing Fees. Attorneys representing a party filing a civil complaint or answer before the Special Grand Jury, shall, at the time of filing, pay a fee equal to the filing fee due in a civil appeal to the State Supreme Court. Individuals filing a civil complaint or answer on their own behalf, before the Special Grand Jury, as a matter of right, shall, at the time of filing, post a fee of fifty dollars, or file a declaration, which shall remain confidential, stating they are impoverished and unable to pay and/or object to such fee.

8. Surcharges. Should this Amendment lack sufficient funding through its fines, fees, and forfeitures (including deductions in paragraph 6), the Legislature shall impose appropriate surcharges upon the civil court filing fees of corporate litigants as necessary to supplement the funding of this Amendment.

9. Compensation of Jurors. Each Juror shall receive a salary commensurate to that of a Circuit Court judge, prorated according to the number of days actually served by the Juror.

10. Annual Budget. The Special Grand Jury shall have an annual operational budget commensurate to double the combined salaries of the thirteen Jurors serving full time, which sum shall be initially deposited by the Legislature into an exclusive trust account to be annually administered by the State Treasurer. Should the trust balance, within any budget year, drop to less than an amount equivalent to the annual gross salaries of seven Circuit Court judges, the State Treasurer shall so notify the Legislature which shall replenish the account, prorated based on the actual average expenditures during the budget year. Should the trust balance in any subsequent year exceed the annual operational budget at the beginning of a new budget year, the State Treasurer shall transfer such excess to the state treasury.

11. Jurisdiction. The Special Grand Jury shall have exclusive power to appoint a foreperson, establish rules assuring their attendance, to provide internal discipline, and to remove any of its members on grounds of misconduct. The Special Grand Jury shall immediately assign a docket number to each complaint brought. Except as provided in paragraphs 17 and 22, no complaint of misconduct shall be considered by the Special Grand Jury unless the complainant shall have first attempted to exhaust all judicial

remedies available in this State within the immediately preceding six-month period. (Such six-month period, however, shall not commence in complaints of prior fraud or blocking of a lawful conclusion until after the date the Special Grand Jury becomes functional. This provision applies remedially and retroactively.) Should the complainant opt to proceed to the United States Supreme Court, such six-month period shall commence upon the disposition by that Court.

12. Qualifications of Jurors. A Juror shall have attained to the age of thirty years, and have been nine years a citizen of the United States, and have been an inhabitant of South Dakota for two years immediately prior to having his/her name drawn. Those not eligible for Special Grand Jury service shall include elected and appointed officials, members of the State Bar, judges (active or retired), judicial, prosecutorial and law enforcement personnel, without other exclusion except previous adjudication of mental incapacity, imprisonment, or parole from a conviction of a felonious crime against persons.

13. Selection of Jurors. The Jurors shall serve without compulsion and their names shall be publicly drawn at random by the Secretary of State from the list of registered voters and any citizen submitting his/her name to the Secretary of State for such drawing. The initial Special Grand Jury shall be established within thirty days after the fulfillment of the requirements of paragraph 5.

14. Service of Jurors. Excluding the establishment of the initial Special Grand Jury, each Juror shall serve one year. No Juror shall serve more than once. On the first day of each month, one Juror shall be rotated off the Special Grand Jury and a new Juror seated, except in January it shall be two. Vacancies shall be filled on the first of the following month in addition to the Jurors regularly rotated, and the Juror drawn to fill a vacancy shall complete only the remainder of the term of the Juror replaced.

15. Procedures. The Special Grand Jury shall serve a copy of the filed complaint upon the subject judge and notice to the complainant of such service. The judge shall have twenty days to serve and file an answer. The complainant shall have fifteen days to reply to the judge's answer. (Upon timely request, the Special Grand Jury may provide for extensions for good cause.) In criminal matters, the Special Grand Jury shall have power to subpoena witnesses, documents, and other tangible evidence, and to examine witnesses under oath. The Special Grand Jury shall determine the causes properly before it with their reasoned findings in writing within one hundred twenty calendar days, serving on all parties their decision on whether or not immunity shall apply as a defense to any civil action that may thereafter be pursued against the judge. A rehearing may be requested of the Special Grand Jury within fifteen days with service upon the opposition. Fifteen days shall be allowed to reply thereto. Thereafter, the Special Grand Jury shall render final determination in writing within thirty days. All allegations in the complaint shall be liberally construed in favor of the complainant. The Jurors shall keep in mind, in making their decisions, that they are entrusted by the People of this State with the duty of restoring judicial accountability and a perception of justice, and are not

to be swayed by artful presentation by the judge. They shall avoid all influence by judicial and government entities. The statute of limitations on any civil suit brought pursuant to this Amendment against a judge shall not commence until a final decision by the Special Grand Jury. Special Grand Jury files shall always remain public record following their final determination. A majority of seven shall determine any matter.

16. Indictment. Should the Special Grand Jury also find probable cause of criminal conduct on the part of any judge against whom a complaint is docketed, it shall have the power to indict such judge, except where double jeopardy attaches. The Special Grand Jury shall, without voir dire beyond personal impartiality, relationship, or linguistics, cause to be impaneled twelve special trial jurors, plus alternates, which trial jurors shall be instructed that they have power to judge both law and fact. The Special Grand Jury shall also select a non-governmental special prosecutor and a judge with no more than four years on the bench from a county other than that of the defendant judge, to maintain a fair and orderly proceeding. The trial jury shall be selected from the same pool of jury candidates as any regular jury. The special prosecutor shall thereafter prosecute the cause to a conclusion, having all the powers of any other prosecutor within this State. Upon conviction, sentencing shall be the province of the special trial jury, and not that of the selected judge. Such sentence shall conform to statutory provisions.

17. Criminal Procedures. In addition to any other provisions of this Amendment, a complaint for criminal conduct against a judge may be brought directly to the Special Grand Jury, when all the following conditions have been met: (1) an affidavit or declaration of criminal conduct has been lodged with the appropriate prosecutorial entity within ninety days of the commission of the alleged crime; (2) the prosecutor declines to prosecute, or one hundred twenty days has passed following the lodging of such affidavit or declaration, and prosecution has not commenced; (3) an indictment, if sought, has not been specifically declined on the merits by a county Grand Jury; and (4) the criminal statute of limitations has not run. Any criminal conviction (including a plea bargain) under any judicial process shall constitute a strike.

18. Removal. Whenever any judge has received three strikes, the judge shall be permanently removed from office, and thereafter shall not serve in any State judicial office. Judicial retirement for such removed judge shall not exceed one-half of the benefits to which such judge would have otherwise been entitled. Retirement shall not avert third-strike penalties.

19. Public Indemnification. No judge complained against, or sued civilly by a complainant pursuant to this Amendment, shall be defended at public expense or by any elected or appointed public counsel, nor shall any judge be reimbursed from public funds for any losses sustained under this Amendment.

20. Enforcement. No person exercising strict enforcement of the findings of a Special Grand Jury shall be held liable civilly, criminally, or in contempt.

21. Redress. The provisions of this Amendment are in addition to other redress that may exist and are not mutually exclusive.

22. Challenges. No judge under the jurisdiction of the Special Grand Jury, or potentially affected by the outcome of a challenge hereto, shall have any jurisdiction to sit in judgment of such challenge. Such pretended adjudication shall be null and void for all purposes and a complaint for such misconduct may be brought at any time, without charge, before the Special Grand Jury by class action, or by any adversely affected person.

23. Preeminence. Preeminence shall be given to this Amendment in any case of conflicts with statute, case law, common law, or constitutional provision. The foreperson of the Special Grand Jury shall read, or cause to be read, this Amendment to the respective Jurors every month. Should any part of this Amendment be determined unconstitutional, the remainder shall remain in full force and effect as though no challenge thereto existed.